IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3506 OF 2007

Amjad Karamhusen Khan. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Ganesh Gole for the applicant.

S.D.Shinde, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 1st November 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. By this application under section 439 of Code of Criminal Procedure, 1973, the applicant is seeking bail in connection with C.R.No.193/2007 registered with Mahatma Phule Chowk Police Station, Kalyan for the offences punishable under sections 395, 397 of Indian Penal Code (I.P.C.).

3. The applicant has approached this Court after suffering adverse order dated 29th August, 2007 at the hands of learned Adhoc Additional Sessions Judge, Kalyan, who, while rejecting application observed as

under:

> "If the above evidence collected during investigation is taken into consideration, it clearly shows that the case of these two accused is not similar to the case of Shatrughna Sutar, who has been released on bail. There is sufficient evidence against them which prima facie shows that they committed dacoity. The offence punishable under sec. 395 of the IPC is punishable with imprisonment for life. In the circumstances, I am of the opinion that this is not a fit case wherein both these accused are entitled to be released on bail. Both the applications, therefore in my opinion are liable to be rejected. They are accordingly rejected."

4. The applicant has been implicated by the Auto Rikshaw Driver, who had taken the applicant at the spot of incident. Secondly, there is recovery of mobile phone, number of which tallies with the mobile number disclosed in the F.I.R., though, there is some discrepancy so far as the make of mobile handset is concerned. None the less, with the recovery of sim card, the applicant- accused can very well be connected with the offence alleged. Having seen the aforesaid findings and the submissions made by the rival parties, prima facie; as stated there is sufficient material to connect the present applicant-accused with the offence alleged.

5. The nature of offence committed under sections 395 and 396 of I.P.C. is a serious offence. While granting bail not only the gravity of the offence is

required to be seen but to see as to how the accused can be prevented from committing the same offence repeatedly. If the accused is enlarged on bail, possibility of his re-committing the same offence cannot be ruled out. In the circumstances, I am compelled to reject the bail application.

6. Needless to mention that the observations made in this order are prima facie and shall not be construed as finding or expression on merits of the case at the time of trial.

7. In the result, bail application is rejected.

JUDGE